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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ARTHUR BAUTISTA,

Defendant and Appellant.

D059808

(Super. Ct. No. SCE300918)

APPEAL from a judgment of the Superior Court of San Diego County, Allan J. Preckel, Judge. Affirmed.

Arthur Bautista appeals a judgment following his jury conviction of one count of misdemeanor false imprisonment (Pen. Code, § 236). On appeal, he contends: (1) the trial court abused its discretion by admitting, pursuant to Evidence Code¹ section 1109, evidence of his prior acts of domestic violence; and (2) the evidence is insufficient to support his conviction of false imprisonment.

¹ All further statutory references are to the Evidence Code unless otherwise specified.

FACTUAL AND PROCEDURAL BACKGROUND

On May 7, 2010, Bautista was living with his girlfriend, Andrea Quinn, and their three children in an El Cajon apartment. That evening, a neighbor called 911 to report a loud argument at that apartment. El Cajon Police Officer Brandon Stanley and his partner responded to the call. When Stanley knocked on the apartment's door, Quinn opened it and appeared to have been crying. Bautista came to the door and told Stanley they had been arguing but that everything was okay.

While Stanley's partner spoke with Bautista inside the apartment, Stanley spoke with Quinn outside in the parking lot. Quinn told Stanley that she was glad he came to the apartment because she thought she was going to die. Quinn explained that she and Bautista were arguing and Bautista struck her with a shower curtain rod on her left calf and ankle. Bautista also chased her and held a knife to her. She did not call 911 because Bautista had disabled all of the cell phones. Bautista was arrested and transported to the police station. Stanley then continued his interview with Quinn inside the apartment. Quinn told Stanley that Bautista accused her of cheating on him and wanted her to go into the master bedroom away from their children. Although she did not want to go into the bedroom, fearing he might violently assault her, she did so and sat in a chair while the argument continued. During that time, Bautista struck Quinn with the shower curtain rod. He also paced back and forth between the bedroom and kitchen. He returned from the kitchen with two large butcher knives and shut the door. Bautista held the knives up to Quinn and told her he had stabbed one of his "homeboys" to let him know he was not

messing around and he would do the same thing to her. Bautista grabbed her by the neck, lifted her off the ground, and pinned her against the wall.

Stanley photographed a knife on a dresser in the bedroom, a shower curtain rod on the bathroom floor, and disabled cell phones in the apartment. He saw swelling and redness on Quinn's ankle and left calf. At the police station, Stanley saw that Bautista had a cut on the palm of his left hand, a scratch on the back of his right hand, and an injury to his right thigh and stomach.

On May 13, Barbara Thompson, an El Cajon police services officer, interviewed Quinn at the apartment. Quinn gave her a version of events generally consistent with the version given to Stanley.

An information was filed, charging Bautista with two counts of inflicting corporal injury on the mother of his children (Pen. Code, § 273.5, subd. (a)) (counts 1 & 5), assault with a deadly weapon and by means of force likely to produce great bodily injury (former Pen. Code, § 245, subd. (a)(1)) (count 2), false imprisonment by means of violence, menace, fraud or deceit (Pen. Code, §§ 236, 237, subd. (a)) (count 3), making a criminal threat (Pen. Code, § 422) (count 4), assault by means of force likely to produce great bodily injury (former Pen. Code, § 245, subd. (a)(4)) (count 6), and attempting to dissuade a witness from reporting a crime (Pen. Code, § 136.1, subd. (b)(1)) (count 7).

At trial, the prosecution presented the testimonies of Stanley, Thompson, Quinn, and other witnesses. However, Quinn recanted many of the events she had described to Stanley and denied being struck by Bautista. The prosecution also presented the

testimony of Amanda Boyles, Bautista's ex-wife, who testified regarding prior acts of domestic violence he committed against her.

Bautista testified on his own behalf. He admitted arguing with Quinn, but denied striking her.

The jury found Bautista not guilty of counts 1, 2, 5 and 6. It found him guilty of count 7 and misdemeanor false imprisonment as a lesser included offense of count 3. It could not reach a verdict on count 4. The trial court granted the prosecution's motion to dismiss count 4. The court granted Bautista's motion for a new trial on count 7. The court sentenced him to 365 days in county jail for his false imprisonment conviction. The court granted the prosecution's subsequent motion to dismiss count 7. Bautista timely filed a notice of appeal.

DISCUSSION

I

Section 1109 Evidence

Bautista contends the trial court abused its discretion by admitting evidence of the prior acts of domestic violence he committed against Boyles.

A

Before trial, the prosecution filed an in limine motion under section 1109 to allow it to present evidence of Bautista's prior acts of domestic violence committed against Boyles. Bautista objected to admission of that evidence, arguing its prejudicial effect outweighed its probative value and should be excluded under section 352. He also filed motions to exclude Boyles's testimony and other evidence of his prior acts.

The trial court held a section 402 hearing on the admissibility of Boyles's testimony regarding Bautista's prior acts of domestic violence. Boyles testified that in 2002 she took her infant daughter to Bautista's home so that he could visit with their daughter. When Boyles refused his request that their daughter stay overnight with him, Bautista yanked their baby out of her arms, picked up a shotgun, and pointed it at Boyles. He told her she could not leave. When she told him her parents would call the police if she did not return home soon, Bautista "snapped" and started punching her in the head and on her arms. He eventually told Boyles to leave with their daughter, which she did. During the trial court's examination of Boyles, she admitted she had married Bautista shortly after the 2002 incident. She also admitted she had previously recanted her testimony that Bautista had a gun during the incident.

The trial court tentatively ruled that "pursuant to [section] 1109[, subdivision] (a) of the Evidence Code and after a [section] 352 analysis" it would allow Boyles to testify at trial regarding the 2002 incident. The court also ruled that it would take judicial notice of Bautista's Penal Code section 273.5 conviction for that 2002 incident and would give the jury a limiting instruction regarding Boyles's testimony.

At trial, the court gave a limiting instruction before Boyles's testimony, stating that if the jury found the 2002 incident occurred, it could, but was not required to, consider that incident as proof that Bautista was disposed or inclined to commit domestic

violence.² Boyles then testified consistently with her testimony during the section 402 hearing.

B

"Under . . . section 1109, evidence of a prior act of domestic violence is admissible to prove the defendant had a propensity to commit domestic violence when the defendant is charged with an offense involving domestic violence." (*People v. Rucker* (2005) 126 Cal.App.4th 1107, 1114 (*Rucker*).) Section 1109, subdivision (a)(1), provides: "Except as provided in subdivision (e) or (f), in a criminal action in which the defendant is accused of an offense involving domestic violence, evidence of the defendant's commission of other domestic violence is not made inadmissible by Section 1101 if the

² The trial court instructed: "[T]he People . . . will, through the testimony of Ms. Amanda Boyles, be presenting evidence that [Bautista] committed domestic violence in 2002, which is not part of the charges in the present case. [¶] Domestic violence means abuse committed against an adult who is a person who is a cohabitant or person with whom the defendant has had a child. Abuse means intentionally or recklessly causing or attempting to cause bodily injury. [¶] You may consider this evidence only if the People prove by a preponderance of the evidence that [Bautista] in fact committed the uncharged domestic violence. Proof by a preponderance of the evidence is a different burden of proof from proof beyond a reasonable doubt. A fact is proved by a preponderance of the evidence if you conclude that it is more likely than not that the fact is true. [¶] If the People have not met this burden of proof, you must disregard this evidence entirely. If you decide that [Bautista] committed the uncharged domestic violence, you may, but are not required to, conclude from that evidence that [Bautista] was disposed or inclined to commit domestic violence, and, based on that decision, also conclude that [Bautista] was likely to commit and did commit offenses involving domestic violence as charged in the present case. [¶] If you conclude that [Bautista] committed the uncharged domestic violence, that conclusion is only one factor to consider along with all the other evidence. It is not sufficient by itself to prove that [Bautista] is guilty of any offense in the present case. The People must still prove, in the present case, each charge and allegation beyond a reasonable doubt. Do not consider this evidence for any other purpose except for the limited purpose of determining [Bautista's] credibility as a witness were he to testify in his own defense."

evidence is not inadmissible pursuant to Section 352." Section 1109, subdivision (e), provides: "Evidence of acts occurring more than 10 years before the charged offense is inadmissible under this section, unless the court determines that the admission of this evidence is in the interest of justice." Section 352 provides: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." The "prejudice" referred to in section 352 is not synonymous with "damaging," but means evidence that uniquely tends to evoke an emotional bias against the defendant as an individual. (*People v. Bolin* (1998) 18 Cal.4th 297, 320.) *Rucker* stated: "Relevant factors in determining prejudice [under sections 1109 and 352] include whether the prior acts of domestic violence were more inflammatory than the charged conduct, the possibility the jury might confuse the prior acts with the charged acts, how recent were the prior acts, and whether the defendant had already been convicted and punished for the prior offense(s)." (*Rucker*, at p. 1119.)

"The admissibility of evidence of domestic violence is subject to the sound discretion of the trial court, which will not be disturbed on appeal absent a showing of an abuse of discretion." (*People v. Poplar* (1999) 70 Cal.App.4th 1129, 1138.)

C

Bautista asserts the trial court abused its discretion under sections 1109 and 352 by admitting evidence of prior acts of domestic violence he committed against Boyles. He does not dispute that Boyles's testimony regarding the 2002 incident constituted evidence

of prior acts of domestic violence within the meaning of section 1109. Rather, he argues the trial court abused its discretion under sections 1109 and 352 by implicitly concluding the probative value of that evidence was not substantially outweighed by the danger of undue prejudice.

We conclude the trial court did not abuse its discretion by admitting, pursuant to section 1109, evidence of Bautista's prior acts of domestic violence. The court expressly stated that it conducted a section 352 analysis in determining whether to admit the prior acts evidence. In so doing, it presumably considered whether that evidence was more inflammatory than the instant charged offenses. According to Boyles's testimony, during the 2002 incident Bautista pointed a shotgun at her, prevented her from leaving his apartment, and assaulted her. In comparison, Stanley testified at trial regarding the instant charged offenses, including testimony that Bautista ordered Quinn to go to the master bedroom, struck her with a shower curtain rod, held a knife to her, grabbed her by the neck, and pinned her against the wall.³ The trial court could reasonably conclude the evidence of the 2002 incident was not substantially more inflammatory than the evidence of the instant charged offenses. (*Rucker, supra*, 126 Cal.App.4th at p. 1119.)

The trial court could also reasonably conclude it was unlikely the jury would confuse Bautista's prior acts of domestic violence with the instant charged offenses. (*Rucker, supra*, 126 Cal.App.4th at p. 1119.) Boyles's testimony regarding those prior

³ Because at the time of the trial court's ruling Bautista was charged with the seven offenses described above, contrary to his apparent belief, we do *not* review the court's ruling based solely on the evidence regarding the charged false imprisonment offense and disregard evidence of the other charged offenses.

acts involved different acts, a different time, and a different victim than those involved in the instant charged offenses. Furthermore, the trial court's limiting instruction stated Boyles would "be presenting evidence that [Bautista] committed domestic violence in 2002, which is not part of the charges in the present case." Therefore, there is little, if any, risk that the jury confused the 2002 incident involving Boyles with the instant charged offenses involving Quinn.

The trial court could also reasonably conclude the evidence regarding the 2002 incident was not unduly remote. (*Rucker, supra*, 126 Cal.App.4th at p. 1119.) It occurred about eight years before the instant incident, which is within section 1109's 10-year period for admissibility. Contrary to Bautista's apparent assertion, the fact that he had not committed any other violent acts between 2002 and 2010 does not preclude admission of that prior acts evidence.

Finally, the trial court presumably considered the fact that Bautista had been convicted of a Penal Code section 273.5 offense arising out of the 2002 incident in deciding whether to admit Boyles's testimony. (*Rucker, supra*, 126 Cal.App.4th at p. 1119.) Furthermore, there was little, if any, risk the jury would punish Bautista in the instant case for his prior acts of domestic violence because the court instructed the jury that he had been convicted of a Penal Code section 273.5 offense (and therefore presumably already punished) for his 2002 acts.⁴

⁴ The trial court instructed the jury that it had taken judicial notice of Bautista's 2002 conviction for corporal injury to a cohabitant, Boyles, in violation of Penal Code section 273.5, subdivision (a). The court further instructed that Bautista had pleaded

We conclude the trial court did not abuse its discretion under sections 1109 and 352 by admitting evidence of prior acts of domestic violence that Bautista committed against Boyles. Contrary to Bautista's assertion, Boyles's testimony was not merely cumulative to his Penal Code section 273.5 conviction arising out of the 2002 incident. As the People note, section 1109's purpose is to allow evidence of a defendant's propensity to commit acts of domestic violence. Boyles's testimony regarding the specific circumstances and Bautista's acts during the 2002 incident provided probative evidence regarding his propensity to commit the instant charged offenses and was not merely cumulative.

II

False Imprisonment

Bautista contends the evidence is insufficient to support his conviction of misdemeanor false imprisonment.

A

Stanley testified regarding Quinn's statements to him the night of the incident. Quinn told Stanley she was glad he arrived that night because she thought she was going to die. Quinn told Stanley that when she arrived home, Bautista was enraged, accused her of cheating on him, and wanted her to go into the master bedroom away from their children. Although she did not want to go into the bedroom, fearing he might violently assault her, she did so and sat in a chair while the argument continued. During that time,

guilty to that charged offense and, in so doing, admitted he had "struck and injured Amanda Boyles."

Bautista struck Quinn on the ankle and calf with the shower curtain rod. He paced back and forth between the bedroom and kitchen, returning from the kitchen with two large butcher knives. Bautista shut the door, held the knives against Quinn, and told her he had stabbed one of his "homeboys" to let him know he was not messing around and would do the same thing to her. Bautista grabbed her by the neck, lifted her off the ground, and pinned her against the wall. She did not call 911 because Bautista had disabled all of the cell phones.

Stanley photographed a knife on a dresser in the bedroom, a shower curtain rod on the bathroom floor, and disabled cell phones in the apartment. He saw swelling and redness on Quinn's ankle and left calf. At the police station, Stanley saw that Bautista had a cut on the palm of his left hand, a scratch on the back of his right hand, and an injury on his right thigh and stomach. Six days later, Quinn gave Thompson a version of events generally consistent with the version she gave to Stanley.

B

Penal Code section 236 defines the offense of false imprisonment as "the unlawful violation of the personal liberty of another."⁵ *People v. Bamba* (1997) 58 Cal.App.4th 1113, at page 1123, stated: "[T]he essential element of false imprisonment is restraint of the person. Any exercise of express or implied force which compels another person to remain where [she] does not wish to remain, or to go where [she] does not wish to go is false imprisonment." *Parnell v. Superior Court* (1981) 119 Cal.App.3d 392, at pages 409

⁵ False imprisonment is a felony if "effected by violence, menace, fraud, or deceit" (Pen. Code, § 237, subd. (a).)

to 410, stated: "Consent of the victim is no defense where the consent is induced by coercion or deception" " 'An express or implied threat of harm does not require the use of a deadly weapon or an express verbal threat to do additional harm. Threats can be exhibited in a myriad number of ways, verbally and by conduct.' [Citation.] False imprisonment may be committed by words or acts and merely by operation upon the will of the individual or by personal violence, or both." (*People v. Dominguez* (2010) 180 Cal.App.4th 1351, 1360-1361.) False imprisonment does not require confinement in an enclosed space. (*Id.* at p. 1357; *People v. Fernandez* (1994) 26 Cal.App.4th 710, 718.)

The trial court instructed the jury with CALCRIM No. 1242 on the offense of false imprisonment as a lesser offense of count 3 (felony false imprisonment) as follows:

"To prove that the defendant is guilty of the crime of False Imprisonment, a lesser offense of Count 3, the People must prove that:

"1. The defendant intentionally restrained, detained, or confined a person; [¶] AND

"2. The defendant's act made that person stay or go somewhere against that person's will.

"An act is done *against a person's will* if that person does not consent to the act. In order to *consent*, a person must act freely and voluntarily and know the nature of the act.

"The law does not specify in units of time a minimum time period required for the restraint, detention, or confinement. The act, however, must be effectuated for an appreciable time, however short."

When a defendant challenges a criminal conviction based on a claim of insufficiency of the evidence, "the reviewing court's task is to review the whole record in

the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11, citing *People v. Johnson* (1980) 26 Cal.3d 557, 578.) "Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. [Citation.] Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction." (*People v. Young* (2005) 34 Cal.4th 1149, 1181.)

The substantial evidence standard of review involves two steps. "First, one must resolve all explicit conflicts in the evidence in favor of the respondent and presume in favor of the judgment all *reasonable* inferences. [Citation.] Second, one must determine whether the evidence thus marshaled is substantial. While it is commonly stated that our 'power' begins and ends with a determination that there is substantial evidence [citation], this does not mean we must blindly seize any evidence in support of the respondent in order to affirm the judgment. . . . [Citation.] '[I]f the word "substantial" [is to mean] anything at all, it clearly implies that such evidence must be of ponderable legal significance. Obviously the word cannot be deemed synonymous with "any" evidence. It must be reasonable . . . , credible, and of solid value' [Citation.] The ultimate determination is whether a *reasonable* trier of fact could have found for the respondent based on the *whole* record." (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1632-1633, fns. omitted.) "[T]he power of an appellate court *begins* and *ends* with the determination as to whether, *on the entire record*, there is substantial

evidence, contradicted or uncontradicted, which will support the determination, and when two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court. *If such substantial evidence be found, it is of no consequence that the trial court believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion."*

(*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874.)

C

Considering all of the evidence and making all reasonable inferences in support of the judgment, we conclude there is substantial evidence to support Bautista's conviction of Penal Code section 236 misdemeanor false imprisonment. Bautista primarily argues there is insufficient evidence to support the element of restraint against Quinn's will. However, Stanley's testimony supports the reasonable inference that an enraged Bautista ordered Quinn to go to the master bedroom. Quinn complied and sat in a chair in the bedroom for an extended period (up to 30 minutes) while Bautista went back and forth between the bedroom and kitchen and finally returned with two knives. Even assuming Bautista did not hold a knife to Quinn, the jury could have reasonably found Bautista did, in fact, bring a knife to the bedroom. Stanley took a photograph of a knife he saw in the bedroom. The jury could have reasonably inferred from Bautista's actions that Quinn feared Bautista would harm her were she to attempt to leave the bedroom. The jury could reasonably find Bautista's actions were an exercise of implied, if not express, force or a threat of harm that compelled Quinn to remain in a location where she did not wish to stay. (*People v. Bamba, supra*, 58 Cal.App.4th at p. 1123; *People v. Dominguez, supra*,

180 Cal.App.4th at pp. 1360-1361.) To the extent Bautista cites evidence or inferences that would have supported a contrary finding, he either misconstrues and/or misapplies the substantial evidence standard of review. (*People v. Rodriguez, supra*, 20 Cal.4th at p. 11; *Bowers v. Bernards, supra*, 150 Cal.App.3d at p. 873-874.)

The jury could reasonably infer Bautista's actions, described above, showed his intent to restrain Quinn in the bedroom against her will. There is substantial evidence to support his conviction of false imprisonment.

DISPOSITION

The judgment is affirmed.

McDONALD, J.

WE CONCUR:

NARES, Acting P. J.

AARON, J.